THE

MADRAS LAW JOURNAL.

VOL.] OCTOBER, 1932. [LXIII.

SEPARATE REGISTRATION AND ASSESSMENT OF PORTIONS OF PERMANENTLY SETTLED ESTATES.

The Permanent Settlement Regulation XXV of 1802 provided that the proprietors of land shall be at liberty to transfer by sale, gift or otherwise their proprietary right in the whole or in any part of their zemindaries. The previous consent of the Government or of any other authority was not necessary. Such transfers were to be held valid by Courts of judicature and the officers of the Government, provided they were not repugnant to the Muhammadan or the Hindu laws or to the regulations of the British Government. But unless the transfers so made were regularly registered at the office of the Collector and the public assessment determined and fixed on such separated portions, they shall have no legal force or effect and the entire estate would be liable for the total land tax in the same manner as if no such transaction had occurred. (S. 8.) It was next provided (S. 9) that the Zemindar should send true and correct accounts of the entire estate as well as of the portions to be separated for a period of not less than three years previous to the sale or transfer to enable the Government to fix thereon a due proportion of the public revenue. The section specifically mentions three cases of alienation: (*i*) Sales for the arrears of public assessment, (*ii*) Sales for the satisfaction of decrees of Courts of judicature, and (*iii*) Transfers by sale, gift or otherwise.

The Regulation further enjoined in S. 10 that no separate estate should be created where the proportionate jama or assessment was less than 500 pagodas, but the section was repealed subsequently by Act II of 1869.

K

In consequence of the above provisions, Regulation XXVI of 1802 was passed to govern the registration of landed estates paying revenue to the Government. S. 2 declares that Collectors should keep public registers for the purpose of registering the landed property within their respective Zillas, and enter all transfers of land in the said registers. Transfers of land without such registration were not to be held valid in Courts of Adalat and persons in whose name the entire estates were registered would be still liable for the payment of revenue on such lands.

The Collectors' Regulation II of 1803 (Ss. 17 and 18) made the Collectors responsible for the just and equitable apportionment of the assessment on the sub-divisions of the estates. The Collectors should furnish the proprietors the amount of the assessment so apportioned and transmit statements of public assessment so apportioned with remarks to the Board of Revenue. The assessment so made shall bear the same proportion to the value of such sub-divisions as the total jama to the value of the entire estate (Ref. S. 9 of the Permanent Settlement Regulation XXV of 1802).

Section 45 of the Revenue Recovery Act (II of 1864) provided that where parts of landed estates held under a Sanad-i-milkiyat-i-istimrar or otherwise subject to the payment of a lump assessment have to be sold for arrears of revenue, the Collector should have power to demand from the landholder or the karnam of the villages accounts for a period of not less than three years preceding the current year and where such a demand has not been complied with, the entire estate shall be sold. The method of apportionment laid down in the section was the same as in S. 9 of the Permanent Settlement Regulation. The provision in S. 46 of the Act that such apportionment was subject to the sanction of the Board of Revenue and that it had no validity until confirmation was repealed by Act VIII of 1914 (The Madras Decentralisation Act).

The above provisions were considered inadequate and Act I of 1876 was passed to make better provision for the separate assessment of land revenue of portions of permanently settled estates alienated by sale or otherwise. The enactment in respect of its subject-matter aims at being exhaustive and complete in itself (*vide* remarks of Bhashyam Iyengar and Benson, JJ., in

Secretary of State v. *Fischer*[1]). But as has been pointed out in *Maharajah of Vizianagaram* v. *Collector of Vizagapatam*[2] the provisions of Act I of 1876 must be treated as being supplementary to those of Regulation XXV of 1802 and read together.

It must be noted at the beginning that neither the Land Revenue Assessment Act nor the provisions of the various Acts and Regulations that led to it affect the validity of transfers *inter se* but only save the rights of the Government to realise the total land revenue from the entire estate in cases of non-registration.[2] Any apportionment of rent between the parties or any agreement as regards the assessment which the alienated portion should bear is binding upon the parties though not upon the Government. (Vide *Zamindar of Ramnad* v. *Ramamani Ammal*[3] and *Sri Rajah Inuganti Rajah Gopalarao* v. *Venkata Suryarao*[4].) The language of S. 8 of the Regulation as was held by the Privy Council in *Vencataswara Yettiappah Naicker* v. *Alagoomoottoo*[5] would seem to apply only to questions between the Zemindar and the Government and to have been framed with a view to prevent a severance of the zemindari without public notice to the Government. Again a right to registry follows title and an alienee is entitled to separate registration, notwithstanding any agreement between the alienor and alienee as to which of them is to be responsible for the revenue. Vide *Kamalammal* v. *Raju Naicker*[6].

The Madras Land Revenue Assessment Act (I of 1876) mentions the provisions under which separate assessment and registration of portions of permanently settled estates has to be made. Two conditions are necessary before separate registration can be ordered under that Act:

(1) The property sought to be separately registered and assessed should be a portion of a permanently settled estate.

(2) And having been alienated by sale or otherwise either by the person seeking separate registration or by his predecessor in title, the property should belong to a different owner. Unless these conditions are satisfied, one cannot succeed in having separate registration under the Act.

---

1. (1902) I. L. R. 26 M. 389 at 392.
2. (1914) I. L. R. 38 M. 1128: 27 M. L J. 278.
3. (1880) I. L. R. 2 M. 234.
4. (1922) 44 M. L. J. 64.
5. (1861) 8 M. I. A. 327 (P. C.).
6. (1896) I. L. R. 19 M. 308: 6 M. L. J. 179.

The property should have been 'alienated by sale or otherwise' as mentioned in the preamble to the Act. The Permanent Settlement Regulation (Ss. 8 and 9) and the Land Registration Regulation (XXVI of 1802, S. 3) use the word 'transfer' and not 'alienate'. The word 'alienate' has been held to be of wider import than 'transfer'. It includes not only cases of transfers *inter vivos* but also cases where the suit property has been separated from the main estate in such a way that the ownership of the land in question becomes vested in another person as owner. The case of a sale or gift calls for no special explanation. In *Pusarla Peda Brahmaji* v. *Trustee of Vizianagaram Estate*[7] the expression 'sale or otherwise' was interpreted to include cases of prescription. The title acquired by adverse possession is equivalent to that obtained by a grant as was held in *Sambasiva* v. *Ragava*[8] and the Privy Council in a case that arose in Bengal *Srimathi Krishna Pramoda Dasi* v. *Dhirendra Nath Ghosh*[9] observed that the person who acquired title by adverse possession could apply to have the separate registration of the same so as to avoid the risk of the land being sold for arrears of revenue due from the entire estate.

The word 'otherwise' in the preamble should not be interpreted *ejusdem generis* with 'sale'. It would be interesting to note that the words 'transfer, succession or otherwise' in S. 8 of the Madras Estates Land Act were held to include cases of surrender or abandonment on the same principle (refer *Jammalamadaka Subbarayudu* v. *Idupuganti Ramaswami*[10]) and the *Ejusdem generis* interpretation of the word 'otherwise' was negatived.

The decision in *Pusarla Peda Brahmaji* v. *Trustee of Vizianagaram Estate*[7] was followed with approval in *Vobilineni Subba Rao* v. *Rajah of Pithapur*[11] and *Avasarala Venkatarama Row* v. *Maharajah of Pittapuram*[12]. In the last mentioned case the scope of the enquiry under S. 2 of the Act was referred to and as a person becomes the owner of property as much by a transfer *inter vivos* as by the effect of adverse possession for the statutory period, the words 'or otherwise' were held to

7. (1919) 11 L. W. 389: 55 I. C. 703.
8. (1890) I. L. R. 13 M. 512 at 515.
9. (1928) L. R. 56 I. A. 74: I. L. R. 56 C 813 (P. C.).
10. (1926) I. L. R. 49 M. 620 : 50 M. L. J. 535 (F. B.).
11. (1926) 53 M. L. J. 400.
12. (1930) I. L. R. 53 M. 784 : 59 M. L. J. 312.

include cases of adverse possession also. The preamble was interpreted so as to be in consonance with S. 2 of the Act.

Again, a question arises as to the applicability of the Land Revenue Assessment Act to involuntary alienations of portions of Permanently Settled Estates. The words 'alienated by sale or otherwise' point to an affirmative conclusion. The word 'owner' in S. 2 of the Act points out that the Act is intended to deal also with cases other than 'transfers *inter vivos*'. It has also been pointed out in *Secretary of State for India* v. *Fischer*[1] that the enactment aims at being exhaustive and complete in itself and as such there is no reason why the Legislature should have taken involuntary alienations out of its operation. But in *Bommarasu* v. *Seshamma*[13] it was held that an alienation by court sale is not within the scope of Act I of 1876 but of S. 9 of Regulation XXV of 1802 and Regulation XXVI of 1802 and that a suit lies against the order of the Collector refusing or allowing separate registration as was held in *Ponnuswami* v. *Collector of Madura*[14]. The decision is open to doubt and when acquisition by prescription is treated as an alienation of the holding within the meaning of the preamble, it stands to reason that involuntary alienations such as court sales should be included as well under the Act.

The point that next arises for decision as a consequence of the use of the word 'owner' is whether a permanent lease comes within the scope of the Permanent Settlement Regulation and the Land Revenue Assessment Act. An early case in *Subbarayalu* v. *Rama Reddi*[15] held that a permanent lease is also a transfer within the meaning of the Permanent Settlement Regulation and that it did not bind the successors of the grantee or the Government. This view was clearly antagonistic to the view of their Lordships of the Privy Council in *Vencataswara Yettiappah Naicker* v. *Alagoomoottoo*[5] that a perpetual lease does not amount to a transfer within the meaning of S. 8 of the Regulation. In view of this pronouncement the later decisions have held that *Subbarayalu* v. *Rama Reddi*[15] was impliedly overruled (vide *Kondappa Naik* v. *Annamalai Chetti*[16] and *Muttu Viran Chetty* v. *Rani Kattama Natchiyar*[17]).

---

1. (1902) I. L. R. 26 M. 389. 5. (1861) 8 M. I. A. 327 (P.C.).
13. (1899) I. L. R. 22 M. 438. 14. (1863) 3 M. H. C. R. 35.
15. (1863) 1 M. H. C. R. 141. 16. (1869) 4 M. H. C. R. 396.
17. (1869) 4 M. H. C. R. 463.

The principle was applied to grantees holding perpetual grants subject to the payment of a small rent under the name of jodi, poruppu or kattubadi and they were declared to be only permanent lessees and not owners. The term "owner" as defined in Markby's *Elements of Law* was quoted with approval. "However numerous and extensive may be the detached rights, however insignificant may be the residue, it is the holder of the residue of the right whom we always consider as the owner." (Vide *Maharajah of Vizianagaram* v. *Collector of Vizagapatam*[2] and *Sri Rajah Inuganti Rajah Gopalarao* v. *Venkata Suryarao*[4].) The term 'owner' has not been defined in the Land Revenue Assessment Act. It would not be out of place to consider here the meaning of the terms 'owner' and 'transfer' used in similar enactments.

The Hereditary Village Offices Act (III of 1895) provides in S. 5 that 'the emoluments of village offices shall not be liable to be transferred or encumbered in any manner whatsoever.' In *Kshetrabaro Bissoyi* v. *Harikristna Naidu*[18] it was held following the Privy Council case of *Vencataswara* v. *Alagoomoottoo*[5] that a permanent lease of service Inam lands was not a transfer of proprietary right of ownership. The case was followed with approval in *Kumara Peda Subbayya* v. *Chinnappa*[19] and *Veeraswami Mudali* v. *Palaniappan*[20].

The Privy Council has also repeatedly held that an Inam grant or a permanent lease of a portion of the zemindari is not a transfer of ownership so as to deprive the Zemindar of his mining right in the sub-soil without express words in the grant to that effect. *Tituram Mukherji* v. *Cohen*[21], *Hari Narayan* v. *Sriram Chakravarti*[22], *Durga Prasad* v. *Braja Nath*[23] and later cases.

The definition of the term 'Landholder' in S. 3, cl. (5) of the Madras Estates Land Act includes a person 'owning' an estate or part thereof. Numerous decisions of the Madras High Court had to advert to the meaning of the term 'own' while deciding whether a post-settlement minor Inamdar paying a

---

2. (1914) I. L. R. 38 M. 1128 : 27 M. L. J. 278.
4. (1922) 44 M. L. J. 64. 5. (1861) 8 M. I. A. 327 (P. C.).
18. (1909) I. L. R. 33 M. 340 : 20 M. L. J. 417.
19. (1914) 28 M. L. J. 303. 20. (1923) 46 M.L.J. 515.
21. (1905) L.R. 32 I.A. 185 : I.L.R. 33 Cal. 203 : 15 M.L.J. 379 (P.C.).
22. (1910) L.R. 37 I.A. 136 : I.L.R. 37 Cal. 723 : 20 M.L.J. 569 (P.C.).
23. (1912) L. R. 39 I.A. 133: I.L.R. 39 Cal. 696 : 23 M.L.J. 26 (P.C.).

small quit-rent was a landholder as defined in S. 3, cl. (5). The decisions, however, are not uniform.

In *Mahant of Balaji Mutt* v. *Suryanarayana Patnaik*[24] Wallis, C. J., held following the decision in *Maharajah of Vizianagaram* v. *Collector of Vizagapatam*[2] that so long as the full owner in making a grant reserves an interest to himself however small it be, he and his successors continue to be the owners and that there is no reason to attribute a different meaning under the Estates Land Act. But Sadasiva Aiyar, J., held the contrary view that the Zemindar was the higher owner but that the grantee was still an owner in the ordinary sense of the term. In the Letters Patent Appeal (*Mahant of Balaji Mutt* v. *Suryanarayana Patnaik*[25]) which followed both Ayling and Kumaraswami Sastri, JJ., concurred in holding that the first clause 'owning an estate or part thereof' did not apply though they differed as to the applicability of the latter clause in S. 3, cl. (5).

In *Yeditha Bhupatiraju* v. *Bhavaraju Venkataratnam*[26] the grant was held to be in the nature of a permanent lease and Spencer and Odgers, JJ., held following the Privy Council that the lessee was not an owner.

In the Full Bench case *Jarugumilli Brahmayya* v. *Chellaghali Achiraju*[27] Schwabe, C.J., and Devadoss, J., held that the reservation of a portion of the quit-rent or jodi did not make the grantee an owner while Venkatasubbarao, Phillips and Oldfield, JJ., held the contrary. The decisions in the earlier cases quoted above were distinguished as applying only to the particular enactment therein referred to. It is submitted that in spite of the conflict above referred to, it is reasonable to hold that a permanent lessee and an Inamdar paying a favourable quit-rent whose legal status is analogous to a permanent lessee are not owners in the legal sense of the term. As such, permanent lessees or Inamdars paying a favourable quit-rent or jodi are not owners under S. 2 of the Land Revenue Assessment Act and separate registration of their holdings cannot take place.

---

2. (1914) I. L. R. 38 M. 1128: 27 M. L. J. 278.
24. 1920 M.W.N. 303. 25. (1921) I.L.R. 44 M. 677: 41 M.L.J. 97.
26. (1921) 41 M.L.J. 512.
27. (1922) I.L.R. 45 M. 716 : 43 M. L. J. 229 (F.B.).

The second important condition for separate registration and assessment is that the land should be a portion of the permanently settled estate of the plaintiff. The Act can have no application to cases where the entire estate is sold or alienated but only to those cases where parts thereof are sold or alienated and the revenue has consequently to be apportioned. Lands granted after the permanent settlement are portions of the estate out of which they are carved. The difficulty often arises with reference to pre-settlement grants. The Regulation was passed in 1802 and it is a question of fact in each case whether the land was included in the assets of the zemindari at the time of the settlement and peishcush fixed thereon. S. 4 of the Permanent Settlement Regulation clearly excludes from the settlement all Lakhiraj lands or lands exempt from the payment of public revenue and all other lands paying only favourable quit-rents. The glossary appended to the Fifth Report defines Lakhiraj lands as lands held rent free or lands the Government dues from which are assigned to any person for his own benefit or appropriated to any public service.

In *Koppi Reddi Nokayya* v. *Mandalekka Bheemanna*[28] Ramesam, J., has classified the lands so excluded from the operation of settlement under S. 4 into three classes: (1) Lands granted on condition of rendering public service—hereditary village service inams; (2) Sarvadumbala Inams, and (3) Inams granted on favourable quit-rent.

The presumptions arising from the date of the grant and the scope of the Permanent Settlement Regulation will be dealt with later. The division referred to above was followed in later cases *Varahaliah* v. *Venkata Suryanarayana*[29] and *Lakshmi Venkayamma* v. *Secretary of State*[30]. Observations to the contrary of Wallace, J., in S.A. No. 355 of 1922 were dissented from in the latter case. But nothing prevents the Government from settling with the Zemindar and including even Lakhiraj lands if they considered it expedient or proper (*vide* observations in the *Venkatagiri* case[31]). In *Narayanaswami* v. *Boda Thammayya*[32] the village Narava in the Vizianagaram zemindari was held to be a Mokhasa grant and included in the assets of the zemindari.

28. (1922) 45 M. L. J. 91.
29. (1923) 18 L. W. 324: 75 I.C. 465: 1923 M. W. N. 732.
30. A. I. R. 1929 M. 399: 117 I. C. 292. 31. (1916) 2 M. W. N. 96.
32. 1930 M. W. N. 945.

The case of grants reserving personal services to the Zemindar was dealt with in a series of decisions of the Madras High Court and it was held that 'the Government would not have allowed any portion of the revenue in consideration of personal services to be rendered to the Zemindar'. (*Rajah Nilmoney Singh* v. *Government*[33], *Rajah Nilmoney Singh* v. *The Government and Beer Singh*[34], *Venkata Rangayya Apparao* v. *Appalarazu*[35], *Rajah Parthasarathi Appa Rao* v. *Secretary of State*[36] and other cases.) In this connection, it is desirable to consider the grants in the Nuzvid and Venkatagiri zemindaries.

With reference to the Nuzvid mokhasas, the Circuit Committee in 1768 in a note to the Abstract of the Revenue Collections in the Nuzvid zemindari state that 'the mokhasa villages and grants being immediately under the Zemindar and given or resumed when he pleases are included in the Government collections'. Mr. Taylor, the Inam Commissioner, in 1860, considered the scope of the reports of the Circuit Committee as well as of the Special Commissioner for the Nuzvid and Charamahal zemindaries, and came to the conclusion that the revenues of the mokhasa villages were included in the assets of the zemindari. Since then, the Privy Council and the Madras High Court have repeatedly held that the mokhasas of Nuzvid were included in the assets of the zemindari though the question as to their resumability depends on the facts of each case. (Refer *Venkata Narasimham* v. *Sobhanadri*[37], *Sri Rajah Parthasarathi Appa Rao* v. *Secretary of State*[36], *Lakshmi Narasimham* v. *Veerabhadrudu*[38] and *Gopisetti Veeraswami* v. *Sagiraju Seetharama Kantayya*[39].)

The zemindaries of Venkatagiri, Kalahasti and Karvetnagar were originally granted on military tenure and the Zemindars were bound to maintain an armed force for the assistance of Government in times of disorder or rebellion. The military service attached to them was commuted into a money payment at the permanent settlement of 1803. The peishcush was not fixed upon the assets of the estates but was only a portion of the cost of the zemindari's military establishment. The sanads granted to them are silent about Lakhiraj

33. (1866) 6 W. R. 121. 34. (1872) 18 W. R. 321.
35. (1910) 20 M. L. J. 728. 36. (1913) I.L.R. 38 M. 620: 26 M.L.J. 39.
37. (1905) L. R. 33 I. A. 46: I. L. R. 29 M. 52: 16 M. L. J. 1 (P.C.).
38. (1923) 19 L.W. 671: 1924 M.W.N. 244. 39. (1926) 51 M. L. J. 394.

lands and lands on favourable quit-rents. In fact the assessment and sanads do not refer to the Permanent Settlement Regulation. The peishcush having been so fixed on the whole of the estate, the Courts have held that the Government have no right to resume the inams or impose further assessment on such lands. (*Secretary of State* v. *Maharaja of Venkatagiri*[40].)

The inclusion or exclusion from the assets is thus a question of fact in each case. The Deshpandya Inams of the Pithapuram zemindari have now been held to be included in the assets of the zemindari[41]. The decision of Devadoss, J., in *Malyala Surayya* v. *Venkata Kumara Mahipathi Suryarao*,[42] which held that the russums alone were included and not the inams was upset in the Letters Patent Appeals that followed, though their liability to be separately registered would be still open to doubt as their Lordships deleted the words 'Post-settlement Inamdars and Landholders' from the Record of Rights Register and also negatived the occupancy rights of the tenants.

Wherever the original grants are available and point to a date anterior to 1st July, 1802, an important question is raised as to whether any presumption arises that the grants were included in the assets of the zemindari. The Circuit Committee was appointed in 1778 and reported on the state of affairs in the Northern Circars up to the end of 1784. Ramesam, J., in *Koppi Reddi Nokayya* v. *Mandalekka Bheemanna*[28] expresses the opinion that the accounts of the Circuit Committee, though they were the nearest in date available to the Government for the purpose of settlement, did not raise a presumption that all grants subsequent were excluded from the settlement. On the other hand, the Regulation not having expressly excluded such grants in 1802, it must be presumed that 'the Regulation and the sanads granted under it speak from their dates (1802) and all grants prior to 1802 were *prima facie* excluded from the settlement'. This no doubt is a rebuttable presumption but affords at any rate a strong piece of evidence that the lands in question were excluded from the permanent settlement (refer also *Varahaliah* v. *Sri Rajah Vatsavaya Venkata Suryanarayana Jagapathiraju*[43]). The decision of Ramesam, J., has been followed in later cases

28. (1922) 45 M. L. J. 91.
40. (1916) 31 M. L. J. 97 : 4 L. W. 133 (P. C.).
41. L. P. As. Nos. 167 to 174 of 1925.
42. (1924) 48 M. L. J. 577.
43. (1923) 18 L. W. 324.

Lakshmi Venkayamma v. *Secretary of State*[44] and *Narayanaswami* v. *Boda Thammayya*[45]. The directions given to the Collector also point out that the list of grants were directed to be brought up to the date of the permanent settlement (refer the Fifth Report, Vol. I). Sundaram Chetty, J., in S. A. No. 689 of 1925 also reiterates the presumption noted above. The burden would thus lie upon the Zemindar to show that grants of lands prior to 1st July, 1802, were in fact included in the assets of the zemindari and that he is entitled to get them separately registered under the Land Revenue Assessment Act.

A presumption was laid down in *Secretary of State* v. *Kirtibas Bhupati*[46] by the Privy Council that the lands within the ambit of the zemindari were *prima facie* included in the assets. But this presumption was restricted only to cases between the Government on the one hand and the Zemindar on the other, in *Vobilineni Subba Rao* v. *Rajah of Pithapur*[11] and it was held that the Zemindar has to prove that the income from the lands was included in the assets at the time of the settlement in all cases where he wants to have separate registration of such lands. Their Lordships Waller and Madhavan Nair, JJ., observe that though the lands of the defendant lie geographically within the ambit of the zemindari there is no presumption that the income from them was included in the computation of assets at the time of the Permanent Settlement.

The Privy Council in *Hurryhur Mookhopadhya* v. *Madub Chunder*[47] laid down that the burden of proving that a particular land was included in the Mal assets of the zemindari lay upon the Zemindar. In *Jagdeo Narain* v. *Baldeo*[48] it was held that once the landlord proved that the land which was sought to be held rent free lay within his *regularly assessed* estate or mehal, the onus would be shifted. Walmsley, J., in *Sashi Bhusan* v. *Kazi Abdulla*[49] interpreted the dictum of the Privy Council as meaning that it would not be sufficient to show merely that the lands lay within the ambit of the zemindari but that it must also be shown that the land was a portion of the regularly assessed estate or mehal. This was followed by the Calcutta High Court

11. (1926) 53 M. L. J. 400.
44. A. I. R. 1929 M. 399: 117 I. C. 292. 45. 1930 M. W. N. 945.
46. (1914) L. R. 42 I. A. 30: I. L. R. 42 C. 710: 28 M. L. J. 457 (P.C.).
47. (1871) 14 M. I. A. 152 (P. C.).
48. (1922) L. R. 49 I. A. 399: I. L. R. 2 Pat. 38: 45 M.L.J. 460 (P.C.).
49. (1923) 28 C. W. N. 143.

in a recent case *Makhan Lal* v. *Rup Chand*[50]. But the Privy Council in *Raj Kumar Gobinda Narayan Singh* v. *Sham Lal Singh*[51] laid down that 'the presumption arising from the Permanent Settlement being in favour of the Zemindar, when any claim is made against him in respect of lands which were included in his zemindari, the burden of proving his title lies upon the claimant'. The earlier Privy Council decision in *Ranjit Singh* v. *Kali Dasi Debi*[52] was followed and the Government does not seem to be a party to the suit. The suit was one for a declaration of the rights to the sub-soil of a village which the Privy Council has repeatedly held would not pass to the grantee in the absence of express words to that effect. The case has no reference to the separate registration of a portion of the estate or to the inclusion of the income thereof in the assets at the time of the Permanent Settlement. The presumption thus raised in *Vobilineni Subba Rao* v. *Rajah of Pithapur*[11] still holds good in cases of separate registration under the Land Revenue Assessment Act. It is reasonable also that the plaintiff claiming the special right of separately registering the lands of the defendant and apportioning the peishcush payable thereon should make out the circumstances under which the said relief can be claimed. Again, the fact of exclusion or inclusion in the assets being within his special knowledge depending upon the sanad and the assets register, the burden should be placed upon the Zemindar in such cases. The burden of proof as between the Zemindar and the Government would be rightly placed on the latter as laid down by the Privy Council in *Secretary of State* v. *Kirtibas Bhupati*[46].

PROCEDURE IN SUITS FOR SEPARATE REGISTRATION.

The alienor or alienee of a portion of a permanently settled estate or the representative of such alienor or alienee may apply to the Collector of the District for its registration in the name of the alienee and for its separate assessment in respect of land revenue (*vide* S. 1). The terms "alienor" and

---

11. (1926) 53 M. L. J. 400.
46. (1914) L. R. 42 I. A. 30: I. L. R. 42 C. 710: 28 M. L. J. 457 (P. C.).
50. (1929) 51 C. L. J. 41. 51. (1931) 61 M. L. J. 9 (P. C.).
52. (1917) L. R. 44 I. A. 117: I. L. R. 44 C. 841: 32 M. L. J. 565 (P. C.).

"alienee" are reciprocal and imply *only those parties between whom the reciprocal relation exists.* The alienation need not be by a person whose name has been entered on the Collector's Register. (Refer *The Collector of Salem* v. *Peer Batcha Sahib*[53].) It does not imply all parties to any transaction which may form a link in the alienor's title. Partition among the members of a family is not an alienation *inter se* as the estate is left intact though there is a mutual transfer of interest between the members of the family (vide *Venkatakrishna Rao* v. *Venkata Jagga Rao*[54]).

The Collector shall, on application, publish a notice in the official Gazette in three successive issues that separate registration would be made if sufficient cause is not shown to the contrary within sixty days from the date of notice. Notice of the enquiry shall also be issued to any alienor or alienee who has not joined in the application (S. 2). If the *parties to the alienation concurred* in applying for separate assessment and if no objection is taken by any person interested in the estate or being taken, is disallowed by the Collector, the Collector shall proceed with the separate registration and assessment thereof. The Collector cannot decline to exercise jurisdiction but must proceed to enquire into the objections raised by the parties and pass proper orders thereon. Vide *The Collector of Salem* v. *Peer Batcha Sahib*[53]. The separate assessment so fixed will be deducted from the peishcush and from that date the estate will not be liable for the assessment on the separated portion and *vice versa* (Ss. 3 and 4).

Concurrence of parties to the alienation is essential and, in its absence, the Collector has no power to separately register the holding. The claimant can only enforce the same or a person aggrieved can obtain a declaration that it ought not to have been made by a declaratory suit in a civil court under Ss. 5 and 6 (*Fischer* v. *Secretary of State*[55]; *Narayanaswami* v. *Sree Rajah Vellanki Srinivasa Jagannadharao*[56]). The suit has to be brought within one year of the date of the order of the Collector allowing or refusing to allow separate registration of the holding. (*Vide* Art. 14 of the Indian Limitation Act.)

---

53. (1906) I. L. R. 30 M. 106: 16 M. L. J. 468: 1 M. L. T. 421.
54. (1898) 9 M. L. J. 66.
55. (1896) I.L.R. 19 M. 292; (1898) L.R. 26 I.A. 16: I.L.R. 22 M. 270 (P.C.).
56. (1909) I. L. R. 33 M. 189.

An application before the Collector might be withdrawn by the party before it is finally heard though no provision has been made in the Act to provide for such cases. Act I of 1876 professes in respect of its subject-matter to be exhaustive and complete in itself (vide *Secretary of State* v. *Fischer*[1]). The Civil Procedure Code can obviously have no application. If such an application is withdrawn with the permission of the Court and with liberty to file a fresh one, there is no reason why it should bar a second application for separate registry. But, however, if no such permission is obtained, the second application would be barred under general principles of law, analogous to *res judicata.* The withdrawal prayed for must be by reason of a formal defect or other cause analogous to a formal defect. An apprehension of failure would not be a sufficient cause. The power of entering a non-suit as in England does not seem to have been possessed by Courts in India.

In suits consequent upon an adverse order under the Land Revenue Assessment Act, the Collector is a necessary party; for without him no declaration for separate registration can be effectively given so as to bind the Government. It has been held that he is a necessary party even in suits for mutation of names in the Revenue Registers. (*Mangamma* v. *Timmapaiya*[57], *Viraswami* v. *Ramadoss*[58] and *K. Sivamma* v. *Venkataramanamurty*[59].) But the position of the Government is not that of a contesting party in the suit. He is only a *pro forma* party without whom the necessary declaration cannot be given. In *Fischer* v. *Secretary of State*[55] it was held by the Privy Council that when once the Collector exercised the powers vested in him under the Land Revenue Assessment Act, the Government have no further right to interfere. Subject to the right of suit under Ss. 5 and 6, the order is final. The apportionment made by him can, however, be questioned before the Board of Revenue within 90 days from the date of the declaration of assessment (S. 7) and the decision of the Board thereon is final. The Governor in Council can, however, readjust the same where there is fraud or material error in the apportionment thereof. The provision that the apportionment

1. (1902) I. L. R. 26 M. 389 at 392.
55 (1898) L. R. 26 I. A. 16. I. L. R. 22 M. 270 (P. C.).
57. (1866) 3 M. H. C. R. 134. 58. (1891) I. L. R. 15 M. 350: 1 M. L. J. 26.
59. (1902) 19 M. L. J. 331 (2).

made by the Collector shall have no validity until it has been confirmed by the Board of Revenue (S. 46 of Act II of 1864 and S. 1 of Act I of 1876) has, however, been deleted by Act VIII of 1914.

It has been also held that in suits for a declaration of the right to separate registration, no damages can be awarded against a party for his refusal to consent as there is no such provision in the Land Revenue Assessment Act. (*Narayanaswami Naidu* v. *Sree Rajah Vellanki Srinivasa Jagannadharao*[56]). Nor has the civil court any jurisdiction to question the apportionment made by the Collector under the Act though it can decide matters of contribution between the parties (*Muthammal* v. *Secretary of State*[60]).

As has been already stated, the non-registration has not the effect of rendering the alienation invalid between the parties, though it will not be recognised by the Government. 'Unregistered transfers are thus invalid only as against the Government though valid as between private parties' (*Subramaniu* v. *Mahalingasami*[61] following *Mangamma* v. *Timmapaiya*[57]). The registered pattadar remains a landholder and becomes a defaulter within the meaning of the Revenue Recovery Act (II of 1864). The scope of Regulation XXV of 1802 was clearly declared by their Lordships of the Privy Council in *Muttu Vaduganadha* v. *Dorasingha*[62] and *Vizianagaram Maharaja* v. *Suryanarayana*[63]. It was framed with a view to secure the land revenue only and the restrictions on alienation were also enacted with the same object. The Interpretation Regulation IV of 1822 makes the point clear by declaring that the earlier Regulation was not intended to 'define, limit, infringe or destroy the actual rights of any description of landholders or tenants'.

It was at one time thought that a landholder whose name has not been registered under Regulation XXVI of 1802 was not entitled to proceed against his tenants under Act VIII of 1865 (Rent Recovery Act) and as such separate registration was absolutely necessary (*Valamaramayyan* v. *Virappa*[64];

56. (1909) I. L. R. 33 M. 189: 1910 M. W. N. 30: 5 I.C. 318.
57. (1866) 3 M. H. C. R. 134.
60. (1913) 24 M. L. J. 405.
61. (1909) I. L. R. 33 M. 41 : 19 M. L. J. 627 (F. B.).
62. (1881) L. R. 8 I. A. 99 : I. L. R. 3 M. 290 (P. C.).
63. (1886) L. R. 13 I. A. 32 : I. L. R. 9 M. 307 (P. C.).
64. (1882) I. L. R. 5 M. 145.

Ayyappa v. *Venkatakrishnamarasu*[65]; *Raghava Reddi* v. *Kanni Gramani*[66]). The contrary was held in *Subbu* v. *Vasanthappan*[67] and the Full Bench decision *Dharmakartha of Tinnanore Temple* v. *Luchmi Doss*[68] has set the conflict at rest and clearly held that there is no enactment which requires a landholder to be registered before he can exercise the powers conferred by Act VIII of 1865. This Act has been repealed by the Madras Estates Land Act and there is nothing in the latter enactment also which requires that a landholder should be registered before he can exercise the powers conferred under the said Act.

K. RAGHAVACHARYULU, M.A., B.L.,
Vakil, Cocanada.

SUMMARY OF ENGLISH CASES.

ATTORNEY-GENERAL v. SMETHWICK CORPORATION, (1932) 1 Ch. 562.

Corporation—Statutory powers—Statutory duties requiring large amount of printing, bookbinding, etc.—Resolution of Corporation to establish its own printing works—Expenditure from out of rate fund—If ultra vires.

A Corporation, whose multitudinous and administrative duties involved an annual expenditure of 5,000*l.* to 6,000*l.*, resolved to establish its own printing establishment on its own premises and work it with its own staff. This was resolved upon after a committee appointed for the purpose recommended that "the establishment of such a department is desirable, and, if developed along reasonable lines, is likely to prove an economical proposition". The proposal involved a capital outlay of 1,000*l.* and an annual expenditure of 1,426*l.* The Attorney-General at the instance of a ratepayer brought an action to restrain the Corporation from spending for this out of the rate fund.

Held, by the Court of Appeal (affirming Eve, J.), that if the Corporation go outside the powers conferred by the statute, there was power for bringing up an improper payment, or order for payment of money for consideration by the Court. But this doctrine of *ultra vires* must be reasonably and not unreasonably understood and applied and that as the enterprise was incidental to or consequential upon those things which the Legislature has authorised, it ought not to be held to be *ultra vires.*

---

65. (1892) I. L. R. 15 M. 484 : 2 M. L. J. 219.
66. (1899) I. L. R. 23 M. 221.
67. (1885) I. L. R. 8 M. 351.
68. (1903) I. L. R. 26 M. 589 (F. B.).

Attorney-General v. *Great Eastern Railway Co.*, (1879) 11 Ch. D. 449, and on appeal, (1880) 5 A C. 473, relied on.

The Corporation cannot cater for the public or endeavour to trade and make a profit. But it cannot be said that they must not have any printing done on their own premises, especially if that saves the ratepayers' money.

In re PARK: PUBLIC TRUSTEE *v.* ARMSTRONG, (1932) 1 Ch. 580.

Will—"Power to donee to appoint to any object except himself"—If definite and valid.

After a specific devise to his sister *A*, a testator bequeathed all the residue to his trustee upon trust to pay the annual income therefrom "to such person (other than herself) or persons or charitable institution or institutions and in such shares and proportions as the defendant *A* should from time to time during her lifetime direct in writing, and from and after her decease in trust as to both capital and income . . . for the Imperial Merchant Service Guild for the benefit of their stress fund absolutely". The question arose if the power was valid.

Held, that if a testator creates a trust he must mark out the metes and bounds which are to fetter the trustees, or as has been said, the trust must not be too vague for the Court to enforce; but here the trust was definite. If *A* designates a definite object in writing, that will be the object to which the trustees or the Court will apply the income; in so far as there is no such direction the charitable gift to the stress fund of the Imperial Merchant Service Guild will operate. The clause in the will which gives *A* power to divert the income during her lifetime to any object other than her own personal use is not bad. "A power to *A. B.* to appoint to an object except himself" is not invalid for a power to appoint to any one except certain persons named or indicated, is good. There is no authority holding that such a restriction should not be on the donee himself.

Attorney-General v. *National Provincial Bank*, (1924) A. C. 262 distinguished as a case where the trustees were in effect left to make a will for the testator.

Platt v. *Routh*, (1840) 6 M & W. 756, reported in the House of Lords as *Drake* v. *Attorney-General*, 10 Cl. & F. 257, relied on.

In re GEORGE DUDDELL. ROUNDWAY *v.* ROUNDWAY, (1932) 1 Ch. 585.

Will—Residuary bequest to such person as W *and* B *shall by will direct and appoint—Joint will by* W *and* B*—Death of* W *during* B's *lifetime—No revocation by* B*—Joint will if effective —Effect of.*

A testator devised and bequeathed the residue of his estate upon trust for his wife for her life and after her death in trust for his two children *W* and *B*, "for their sole and separate use during the term of their natural lives. . . . and after the decease of the said *W* and *B* . . to such persons and to such ends and purposes as the said *W* and *B* shall by will direct and appoint, and in default of such appointment to my right heirs for ever". After the death of the testator, *W* and *B* executed a joint will, exercising the power of appointment under the will. *W* died in 1917 having made a separate will confirming the joint will and probate was granted of his separate will and the joint will as *W's* last testament. *B* who survived him did not attempt to revoke the joint will.

Held, that a power of appointment given by will to two persons is valid and exercisable. The testator is not thereby seeking to do anything that the law did not permit. The joint will of *W* and *B* is an appointment by them jointly according to the testator's wishes. On the death of *W* no property passed, no property vested and the appointment could not have any immediate effect whatsoever. But it was an appointment which was then inchoate and on the death of *B* without revoking it, the joint will on being admitted to probate will be a direction and appointment which will comply with the requirements of the testator.

Observation to the contrary of Lord Mansfield in *Darlington* (*Earl*) v. *Pulteney*, (1775) 1 Cowp. 260, not followed as *obiter*.

In re JOHN DRY STEAM TUGS, LIMITED, (1932) 1 Ch. 594.

Company—Voluntary winding up—Surplus assets—Right of preference shareholders to share pari passu *with ordinary shareholders.*

A Company was incorporated in 1909 with a nominal capital of 25,000*l*. divided into 1,250 preference shares of 10*l*. each and 1,250 ordinary shares of 10*l*. each, out of which a small proportion only were fully paid. In 1929 the Company went into voluntary liquidation, and after payment of all debts and collecting all the assets and repaying to the preference and ordinary shareholders all the capital paid up on their shares, had surplus assets available for distribution. By cl. (5) of the Articles of Association, the preference shareholder had the rights (*i*) to a fixed cumulative dividend at the rate of 5 per cent. per annum on the capital for the time being paid up on the said preference shares respectively and after paying or providing for the payment of a dividend for such year at the same rate on the capital for the time being paid up on the ordinary shares to an additional half per cent. calculated on the same basis for each 1 per cent in excess of 5 per cent paid on the ordinary shares, and (*ii*) to have priority in a winding up both as to cumulative dividend aforesaid and return of capital over all other shares. The question was if in

addition to the rights under cl. (5), the preference shareholders had right to claim rateably with the ordinary shareholders a share in the surplus.

Held, that cl. (5) is not exhaustive but only expressive of certain rights which the preference shareholders have. The first right regards it as a going concern and the second in the course of liquidation. Nothing is said as to the distribution of any assets still remaining for distribution after the capital has been repaid and in the absence of a provision to the contrary, these assets ought to be shared by all the contributories. The question really is whether the memorandum and articles contain an exhaustive delimitation of the rights of the preference shareholder.

Anglo-French Music Co., Ltd. v. *Nicoll,* (1921) 1 Ch 386, In re *Espuela Land and Cattle Co.,* (1909) 2 Ch. 187 and In re *Fraser and Chalmers, Ltd.,* (1919) 2 Ch. 114, followed.

In re JOHN SINCLAIR LIMITED'S TRADE MARK, (1932) 1 Ch. 598.

Trade Mark—Trade Marks Act, S. 22—Assignment of Trade Mark—Goodwill, meaning of—Assignor not a party—Registration of Mark if can be expunged from the Register.

Carreras, Ltd., tobacco manufacturers, registered in 1923 a trade mark in respect of tobacco, whether manufactured or unmanufactured. In 1930 that mark was assigned to John Sinclair. Ltd., by an assignment the operative part of which was that *C* assigned to *S* "all the trade mark now standing upon the Register of Trade Marks, and therein numbered 437,870 in class 45, together with the goodwill of the business concerned in the goods with respect to which the said trade mark is registered". Though the assignment was general, it was not intended to assign the business of selling and dealing in manufactured and unmanufactured tobacco but only the cigarette business of Carreras. Another tobacco company applied to expunge the registration in favour of *S* on the ground that the assignment was invalid as contrary to S. 22. S 22 says that "A trade mark when registered shall be assigned and transmitted only in connection with the goodwill of the business concerned in the goods for which it has been registered and shall be determinable with that goodwill.

Held, (by the Court of Appeal confirming Maugham, J.), that S. 22 does not permit a severance of the goodwill but indicates that the goodwill concerned in the goods for which the mark has been registered is a single goodwill. The present trade mark was registered in respect of the whole of class 45, which is "tobacco, whether manufactured or unmanufactured". No limitation is introduced there which confines the use of the mark to cigars or cigarettes and the assignment which does not assign the goodwill of the whole tobacco business but only in cigarettes is invalid.

On the relief to be granted, held by Maugham, J., that if the assignment were recent, the proper form might have been simply to expunge the notice of the assignment, the result of which would have been to leave the assignor on the register as the owner of the mark; but as the assignees have altered the size of the trade and increased it, the proper order was to order the mark to be expunged following *Bowden Wire, Ltd.* v. *Bowden Brake Co., Ltd.*, (1914) 31 R. P. C 385

But held by the Court of Appeal that for an order to be made expunging the mark, which, if the assignment is disallowed, would seem to remain the property of Carreras, Ltd., it would be necessary to have Carreras before the Court The mere fact that they were aware of these proceedings will not suffice. The proper order can only be "simply to expunge the notice of the assignment".

In re JONES: MEACOCK *v.* JONES, (1932) 1 Ch. 642.

Will—Legacy to children contingent on attaining 25 *years—No provision for maintenance—Interest on legacy—If can be allowed as maintenance to the children.*

Where a legacy was given in favour of the testator's children contingent on their attaining 25 years,

Held, the general rule of construction in regard to contingent legacies is that such legacies do not carry interest until the time for payment. But it has certain exceptions, one where the legatee is an infant child of a testator or an infant to whom the testator has put himself in *loco parentis.* In such cases it may carry interest if there is no other provision made by the will for the maintenance of the legatee. It is not necessary that the contingency must be the attainment by the child of full age or marriage under that age. The principle is that in those cases the Court infers that the testator intended that the child should be maintained.

In re *Abrahams,* (1911) 1 Ch. 108, discussed.

THE OCEAN COAL CO., LTD. *v.* THE POWELL DUFFRYN STEAM COAL CO., LTD., (1932) 1 Ch. 654.

Company—Private company—Special restriction on transfer of shares—First offer to be to members—Offer of a number of shares—Members accepting to take some of them—If good acceptance.

By the articles of association of a private company incorporated under the 1908 to 1917 Companies Acts, it was provided that the holder of any shares desiring to sell or transfer any of his shares to any person other than a registered holder of shares in the company shall notify in writing

to the Board the number of shares proposed to be transferred, the price proposed, and the name, etc., of the proposed transferee; that the Board shall thereupon offer the shares to the other shareholders of the company at the price so named, that the shares shall be sold to the parties so accepting the offer at that price, but that if they are not so accepted by any member, the holder may sell them to an outsider. A shareholder holding 3,00,000 shares offered to sell 1,35,000 of his shares at 2*l*. per share. The other shareholders accepted to buy only 5,000 of them at that price but the holder refused to so sell piecemeal.

Held, that the offer was "I am willing to sell 1,35,000 shares at a price of 2*l*. per share" and not "I am willing to sell one share at 2*l*. up to the total number of 1,35,000" It can only be accepted by one or more of the shareholders by conjointly saying "we will take a transfer of the 1,35,000 shares". The offer is not accepted within the meaning of the article unless one or more members agree to take up the whole number offered. The Article has not the effect of turning what is an offer to sell a given number of shares into an offer to sell one share at the price stated for the whole number offered.

In re RUSSIAN AND ENGLISH BANK, (1932) 1 Ch. 663

Company—Foreign company—Dissolved before 1929*—If can be wound up under the Companies Act,* 1929, *Ss.* 337 *and* 338.

A company incorporated under the Laws of Russia in 1910 was dissolved before the date on which the Companies Act of 1929 came into operation as held in *Russian and English Bank* v. *Baring Brothers & Co., Ltd.,* (1932) 1 Ch. 435. Three persons claiming to be creditors of the company presented a petition for the winding up of the company under S. 338 of the 1929 Act. The debt was disputed by the company.

Held, a company which owes its existence to foreign law is an unregistered company within the meaning of S 338. It was decided on the language of the relevant section of the 1862 Act that an unregistered company might be wound up under its provisions and S 338 (2) did not intend to alter the law as it had existed under the Acts of 1862 and 1908

As a general rule a disputed debt may not be the basis of a creditor's petition but where the persons whose debt is disputed would otherwise be without redress, it can be relied on. Their action on the debt could not be proceeded with as the foreign company have no longer any existence and as such the only course open to them is to wind up the company and prove the debt before the liquidator.

In re BRITISH TRADE CORPORATION, LIMITED, (1932) 2 Ch. 1.

Bill of Exchange—Drawer and drawee same—Option by holder to treat the bill as promissory note—"In the body of it made pay-

able at a particular place"—S. 87—Meaning of—Address of drawee at bottom of bill—If "in the body of it".

On March 23, 1920, the branch of the B Co. at Batoum drew in favour of *M* a document in the following form:—"At sight pay this sole exchange to the order of *M* the sum of 1000*l*. sterling value received which place to account No. 2. Signed by the manager and accountant for the B Co." It was addressed to B Co., London. It was successively indorsed over to the order of *I, J* and *K*. On December 20, 1923, *K's* agent presented the document for payment at London office of B Co. but payment was refused on the ground that "all endorsements require banker's certification and indemnity required for mutilation". In 1926 the B Co. was voluntarily wound up and *K* put in a proof in the winding up in respect of the document. It was rejected as barred. *K* claimed to treat the document as a promissory note under S. 5 on the ground that the drawer and the drawee were the same person and contended that under S. 87 it must be presented for payment, that it was presented only on December 20, 1923, and the claim was not therefore barred. Section 87, sub-sec. (1) says that "where a promissory note is in the body of it made payable at a particular place, it must be presented at that place in order to render the maker liable. . "

Held, that "in the body of" the note must mean in the terms of the actual contract to pay which is contained in the note. The address at the bottom of the Head Office did not make it "in the body." No presentment was therefore necessary and the claim was barred. "To the B Co., London" were added to treat it as a bill of exchange.

In re BEALE'S SETTLEMENT TRUSTS: HUGGINS *v.* BEALE, (1932) 2 Ch. 15.

Trust—Trust for sale with consent of A *and* B*—Bankruptcy of* A*—Consent given by* B *but refused by* A*—Court if can order sale nevertheless—Trustee Act,* 1925, *S.* 57 *and Law of Property Act,* 1925, *S.* 30.

The Court has jurisdiction under S. 30 of the Law of Property Act, 1925 and S. 57 of the Trustee Act, 1925, to direct, in the exercise of its discretion, a sale by trustees for sale where the necessary consent cannot be obtained by reason of the refusal of the person to give it.

SHEFFIELD MASONIC HALL COMPANY, LIMITED *v.* SHEFFIELD CORPORATION, (1932) 2 Ch. 17.

Easement—Light—Room receiving ancient lights on two sides —New building on one side—Right to build—Extent of easement —Prescription Act, 1832, *S.* 3.

One of the rooms in a building was lighted by windows looking on to *S* Street and *E* Street on two sides of it. At the date of the

action all the windows of the room were ancient lights. In 1931 a high building was begun in *S* Street which was calculated to obstruct the light coming through *S* window. It was contended that where there are two open spaces each facing ancient lights to the same parts of a building on different sides of that building, the first builder is entitled to build to any height so long as the other window *E* lets in sufficient light.

Held, that the right in these cases is more what is described as *ne facias* in Roman Law. The dominant tenement is entitled to the benefit of a quasi covenant by the owner of the servient tenement precluding him from building in the normal case in such a way as to obscure the plaintiff's rights to a degree which would interfere with his comfortable enjoyment of his premises,—according to the habits and requirements of ordinary people—or cause a nuisance to the plaintiff in the enjoyment of his premises. In a case where there are two servient tenements, the rule cannot be that the first builder is entitled to build as he pleases on the footing of "first come, first served". The real nature of the restrictive obligation imposed upon the people facing those two windows is that they will not so build as by their joint action to cause a nuisance to the plaintiff. In other words, the owner of *S* can build to such a height as, with a similar building by the owner of *E,* will yet leave sufficient light for the plaintiff's room. The obligations by both owners are the same; neither has a greater obligation than the other.

Value of expert evidence in cases of this kind discussed.

In re ISABEL JOANNA JAMES: GRENFELL *v.* HAMILTON, (1932) 2 Ch. 25.

Charity—Bequest for establishing a Home of Rest—Valid charitable trust—Nature of persons to use the Home—Failure of trust—Procedure.

A testatrix by her will appointed *G* and *B* as executors and trustees thereof, and after providing for certain legacies, bequeathed certain property unto her trustees in trust to establish and maintain a Home of Rest for the Sisters of the Home of the Community of the Epiphamy at Truro, the Clergy of the Diocese of Truro and such persons as the Mother Superior for the time being of the Home of the Community shall nominate and appoint. The Mother Superior and Bishop of Truro were of opinion that the community would be unable to accept the devise às the interest accruing out of the fund would not be sufficient to maintain the Home. The executors thereupon applied to the Court for directions.

Held, that a gift of a fund or property for the purpose of founding and endowing a Home of Rest is in itself *prima facie* a charitable object. It may be that to provide a Home of Rest for those who are not in need of it would not be charitable; but *prima facie* the words "Home of Rest" indicate a Home which is

to provide relief for those who are in need of it. That being so, the trust is good, though some of the purposes to which the fund may be applied are not strictly charitable. The Mother Superior is to nominate and can nominate only such persons as are properly suitable to a Home of Rest as a charity. The fact that the words in the will are wide enough in themselves to enable her to appoint other persons does not prevent the whole gift from being charitable. If such a Home cannot be established or maintained, then the trust will be applied *cy pres*.

In re *Estlin*, (1903) 72 L. J. Ch. 687 and *Hunter* v. *Attorney-General*, (1899) A.C. 309, followed.

In re LEE, BEHRENS & COMPANY, LIMITED, (1932) 2 Ch. 46.

Company—Winding up—Pension to widow of managing director—Not confirmed by a general meeting of shareholders—No objection by any—If valid—Tests for validity of pensions—Whether reasonably incidental to the business or for benefit of the Company.

A private Company went into voluntary liquidation in 1931. One *S* was its managing director for many years and died in 1923. In 1928 the directors resolved to give *S's* widow an annual pension of 500*l*. The widow lodged a proof in the winding up for 8,000*l*., the capitalised value of the pension. The resolution was not confirmed by any general body meeting of shareholders. The articles of the Company expressly gave power to the directors to provide for the welfare of persons in the employment of the Company or formerly in its employment, and the widows and children of such persons, etc. The liquidator rejected the claim as *ultra vires* the directors' powers.

Held, on appeal, it is not that an arrangement of this nature for rewarding long and faithful service on the part of persons employed by the Company is not within the power of an ordinary trading Company. It was so expressly given also under its memorandum. But such grants involve an expenditure of the Company's money, and that money can be spent only for purposes reasonably incidental to the carrying on of the Company's business and the validity of such grants is to be tested by the answers to three questions:—(1) Is the transaction reasonably incidental to the carrying on of the Company's business? (2) Is it a *bona fide* transaction? (3) Is it done for the benefit and to promote the prosperity of the Company? In this case the gift was by the directors to one of their body and cannot be done unless authorised by the instrument which regulates the Company or by the shareholders at a properly convened meeting for the purpose. A director is not a servant of the Company nor is a managing director a person in the employment of the Company. The fact that the shareholders were few and individually assented to or were not likely

to object may preclude them individually but will not bind the Company or the liquidator.

In re *George Newman & Co.*, (1895) 1 Ch. 674, followed.

In re PRICE: TRUMPER *v.* PRICE, (1932) 2 Ch. 54.

Will—Specific legacy—Gift of "my 400l. five per cent. War Loan, 1929-1947"—Misdescription—No War Loans but War Bonds converted—If the converted Bonds passed under the gift.

A testatrix, not a woman of any great education, gave to her niece "my 400*l*. 5 per cent. *War Loan*, 1929-1947" but she never had any *War Loan*, though before 1925 she had acquired 400*l*. National *War Bonds*. Later on she converted her War Bonds into Conversion Stock and Treasury Bonds. The question was if these later Conversion Stock and Treasury Bonds passed to the legatee under the bequest of "War Loan" as *falsa demonstratio*.

Held, it was clear that the testatrix must have forgotten the correct description of her investments. The testatrix evidently regarded any investments she made for helping the country during the War as "War Loan". Even if it involves carrying the rule of *falsa demonstratio* further than it has yet been carried, it is proper to hold in this case that the clause operates to vest in the legatee the two sums under the Conversion Stock and Treasury Bonds.

In re MORGAN AND PROVINCIAL INSURANCE CO., LTD., (1932) 2 K. B. 70

Insurance—Motor lorry—Proposal—Answers to questions—If condition or description of risk.

M. and F. Co. were coal merchants carrying on business at *A*. They had effected a policy of insurance with P. Co., Ltd., in respect of a motor truck. The policy stated that the claimants had made the proposal and signed a declaration which it was agreed should be deemed to be of a promissory nature and effect and should be the basis of the contract as if incorporated in the policy. The following were the questions asked for by P. Co and answers given by M. and F Company: "State (*a*) the purposes in full for which the vehicles will be used, and (*b*) the nature of the goods to be carried. (*c*) Towns and localities where vehicles will be used." Answers: "(*a*) Delivery of coal; (*b*) coal; (*c*) Abercarn County." The P Co. agreed therefore to insure the M. and F. Company against liability for injury or damage caused by the use of the lorry or to the lorry itself. The M and F Company had used the lorry for carrying timber also and in fact on the day of collision the lorry carried both timber and coal but had discharged the timber earlier and at the time of the collision there was only coal in the lorry. In an action against the insurance company for damages due to the collision, the Company disclaimed liability stating that there was a warrant or promise that nothing but coal should be

carried and that inasmuch as timber was carried, the policy was invalidated, though the carriage of the timber in no way led to the collision.

Held, that the answers to the questions put by the insurance company did not amount to an undertaking by the assured that during the currency of the policy the insured vehicle would be used only for the purpose of carrying coal. They only meant that the vehicle should be insured only whilst it was engaged in carrying or delivering coal within Abercarn limits. They amount only to a description or definition of the risk intended to be insured against, and as the accident happened while the car was in the course of delivering coal and in Abercarn, it was within the risk at the time though prior to that it had carried timber or went outside the Abercarn jurisdiction.

Farr v. *Motor Traders Mutual Insurance Society*, (1920) 3 K.B. 669, followed.

Dawsons, Ltd. v. *Bonnin*, (1922) 2 A.C. 413 and *Roberts* v. *Anglo-Saxon Insurance Association*, (1927) 96 L.J.K.B. 590, distinguished

---

IBERIAN TRUST, LIMITED *v.* FOUNDERS TRUST AND INVESTMENT CO., LTD., (1932) 2 K. B 87.

Practice—Order against Corporation to do an act within a time—Order not served till after the time expired—Order not stating the consequences of disobedience—Failure to do the act—Liability of the directors—Rules of Supreme Court, 1883, *O.* 41, *r.* 5, *and O.* 42, *r.* 31.

In an action against the defendant Company, an order was passed on 7th July, 1931, as follows:—"It is this day hereby adjudged and declared that the plaintiffs are entitled to the return by the defendants of the following shares, viz., 258,000 deferred shares and 11,180 preferred shares in R. Co., within 14 days from the date hereof." A copy of the order was served upon *H*, one of the directors on 19th August, 1931, and on *S* another director on 7th November, 1931. The order in both cases did not have an indorsement on it of a memorandum stating the consequences of disobedience as required by O. 41, r. 5. The defendant Company did not comply with the order. Thereupon a summons was taken out for leave to issue writs of attachment on *H* and *S* for disobedience.

Held, the attachment could not issue for the following reasons: (1) In order to constitute a contempt of Court for which the directors may be punished there must be wilful disobedience by them to do something which they have been ordered to do. But the order here does not direct the defendant Company to do anything. It does not even provide that the defendant Company shall return the shares. In re *Oddy*: *Major* v. *Harness,* (1906)

1 Ch. 93, relied on. (2) Even assuming the order directs the defendant to do an act, namely, to transfer the shares to the plaintiffs, the order could not be enforced by penal proceedings, because there can be no default in compliance with an order ordering something to be done within a certain time when the order was not served until after the time had expired. (3) The order did not contain an indorsement as required under O. 41, r. 5, calling the attention of the person ordered to do the act that the result of disobedience will be to subject him to penal consequences. (4) As the plaintiffs are not in a position to pursue the original remedy against the defendant Company, they cannot proceed against the directors, the remedy against whom is only an alternative one.

OCEAN ACCIDENT AND GUARANTEE CORPORATION, LTD. *v.* COLE, (1932) 2 K B. 100.

Road Traffic Act, 1930, *S.* 112, *Sub-S.* (3)—*Motor car insurance—Payment of premium on* 11*th—Receipt renewing policy as from 3rd—If false statement—Knowledge of falsity.*

Prior to June 3, 1931, an Insurance Company issued to *P* a public liability motor car policy of assurance, whereby *P* was indemnified against third party claims for a period ending June 3, 1931, "and during any period for which the Corporation may accept payment for the renewal of this policy". It was a condition of the policy that "no liability shall arise until the premium due has been paid and accepted". No premium was paid for the period subsequent to June 3, 1931, till 11th June, 1931, when *P* paid the premium and a receipt was given stating 11th as the day of receipt but as for policy from June 4th, and issued a certificate of insurance to *P* stating "Date of commencement of insurance, June 4, 1931". The insurance company was prosecuted under S. 112 for issuing a certificate of insurance which to their knowledge was false in a material particular.

Held, that even assuming the statement that the date of commencement was June 4 was false, there must be a finding that it was false to the knowledge of the person issuing the certificate and the conviction therefore must be quashed, and a certificate based upon a mistaken view of the law cannot be said to be false to the knowledge of the insurance company. If anything it is obvious that the Company believed it to be true.

BEST *v.* BUTLER AND FITZGIBBON, (1932) 2 K. B. 108.

Trade Union Act, 1871, *S.* 12—*Officers of a registered Trade Union—Charge of wilfully withholding moneys—Proof of possession at the time of charge, if necessary.*

B and *F,* who were the Secretary and Treasurer respectively of a registered Trade Union, were charged under S. 12 of the

Trade Union Act with wilfully withholding moneys of the Union contrary to that section. It was proved that one or other of them have had the whole of the moneys but as to what exactly each had was not clear and there was no evidence that they were in possession of the moneys at the date of the charge. It was shown that each was aiding and abetting the other in the matter. S. 12 says that "If any officer . . of a Trade Union registered under this Act . . . obtain possession of any moneys . . of such Trade Union, or, having the same in his possession, wilfully withhold or fraudulently misapply the same, . . . or any part thereof, the Court . . may, by summary order, order such officer . . . to deliver up all such moneys . ." The Magistrate dismissed the complaint holding that "a man cannot withhold what he has not got, since the whole case for the prosecution was to show that the money had been squandered. If the section had said, neglect or refuse to deliver, the matter would have been different".

Held, on appeal, that if it is once shown that the person charged has obtained possession of the moneys and has not accounted for it, he is liable to be convicted under S 12. The term "wilfully withhold" indicates a continuing offence. It was not necessary to go further and show that either of them had the money in his possession on the date of the charge.

JOTTINGS AND CUTTINGS.

Forensic Success and Parliamentary Failure.—In his recently published monograph on Erskine, Mr. Lovat Fraser calls attention to the fact that the great advocate, perhaps the greatest ever seen at the English Bar, was in Parliament a complete failure, apparently being for long cowed by Pitt's imperious manner. In this failure in a dual capacity he is by no means unique, for few indeed have been able to attain distinction in equal degree both in the forum and in the House of Commons. The late Lord Bryce, in his sketch of Sir George Jessel, says: "Lawyers in the English Parliament are under the double disadvantage of having had less leisure than most other members to study and follow political questions, and of having contracted a manner and style of speaking not suited to an assembly which, though deliberative, is not deliberate, and which listens with impatience to a technical or forensic method of treating the topics which come before it." Jessel, Lord Bryce adds, had borne little part in politics till he took his seat in the House of Commons, and when he spoke there he obtained no great success. But, indeed, a long list might be compiled of those who, while brilliant in the courts, were little short of failures in the House of Commons Sir Samuel Romilly was an exception. In his case his wide sympathies and his passion for the reform of the old criminal law with all its atrociously

severe penalties won for him an esteem which is seldom meted out to the lawyer member. Coming down to more modern times, Lord Herschell was another exception to the general rule. As a member of the House of Commons he made himself felt from the beginning, the air of quiet conviction about his delivery and the soundness of his matter raising him above the ruck of political lawyers, of whom it has been said that you cannot help hearing the rustle of their silken gowns. In addition to a forensic manner which is not pleasing to the generality of members, it has been said that the lawyer in the House has always been apt to be regarded as a person with an axe to grind, and consequently one not to be looked on with much favour. If there be anything in this criticism, it is only fair to add that lawyers are not unique in this foible.—*L. T.*, 1932, p. 477.

A Wife's Forgery of Cheques.—The circumstances in *Greenwood* v. *Martins Bank, Ltd.* (*Times,* July 6) were of an unusual nature, and are not likely to be repeated, but they raised a question of general importance—the extent to which a bank customer's own conduct in respect of forged cheques will counterbalance the liability of the bank for negligence in not detecting the forgery. The forger in this case was the plaintiff's wife, and when in October, 1929, she told him that his account had been exhausted by a series of these cheques, he refrained at her entreaty from informing the bank. In the following months there was trouble between them over the matter, and in June, 1930, the plaintiff said that he "was going right away to the Bank." When he came home that night she shot herself, and then he claimed from the Bank the amount of the cheques. Mr. Commissioner du Parcq (now du Parcq, J.), at the Manchester Assizes, decided in his favour, but the Court of Appeal reversed his decision (1932, 1 K B. 371; 101 L. J., K B 33), and the House of Lords have approved this reversal. The legal results of the forgery started with the finding of fact that the signatures to the cheques were not merely not genuine, but were honoured through carelessness of the Bank officials, so that *prima facie* the Bank was liable, and, indeed, was liable apart from negligence. But it was argued that the plaintiff had either ratified or "adopted" the cheques; or that by his delay in informing the Bank he was estopped from alleging the forgery.—*L. J.*, 1932, p. 128.

Not a Public School.—That Borstal is not a public school was made manifest by Swift and Humphreys, JJ., in the Court of Criminal Appeal in London last week. There were some amusing exchanges of the "Borstal or Balliol" type between Bench and Bar; but the appeal came to a swift and satisfactory end. The Recorder of Norwich—the city in which a clergyman recently said one or two hard things concerning the City of Belfast—had sentenced two boys to three years' detention in a Borstal institu-

tion. The Court of Criminal Appeal quashed the convictions and the sentences, after Swift, J , had observed: "The Recorder seems to have thought Borstal is a public school . . . ."

"In this case," said he, "the learned Recorder's desire to benefit these two lads has obliterated his legal views of his powers. A Borstal institution is a place to which young criminals are to be sent, and to be sent only when it is shown that they have criminal tendencies or are associates of criminals." He observed that the lads were the children of most respectable people and that Borstal was not a school for children.—*L. J.*, 1932, p. 137.

A Frightful Reforming.—Borstal is better in intention and effect than the frightful and "remedial" methods of olden times, when young people were often imprisoned for long periods, transported, and sometimes suffered the death penalty.

There is a story of Willes, J , son of Chief Justice Willes, a son who was not by any means a great Judge, but who was very well-meaning. At Lancaster Assizes a boy was convicted and the Judge, to "reform by frightening" him, sentenced him to be hanged the next morning. But in the middle of the night the Judge was so affected by his conscience and by a fear that he might himself very well die during the night and the boy be hanged in consequence, that he arose and went to the High Sheriff's house with a written reprieve returned to bed and slept soundly and peacefully till morning. The boy, of course, had a night of terror and foreboding, and there is no record as to whether the effect was truly remedial. Probably not.—*L. J.*, 1932, p 137.

The Extra Thousand of the Irish L. C.—Ireland, before the treaty, had its Lord Chancellor and its Great Seal; and a curious fact was that his salary *qua* Lord Chancellor was greater than the salary of his English counterpart. Lord Ashbourne's salary, for example, was 8,000*l.* a year and he received 1,000*l.* for the purchase of an outfit on entering office. The English L. C. gets 5,000*l.* as Chancellor; the other 5,000*l.* is for his services as Speaker of the House of Lords.

The allowance of 1,000*l.* for the Irish Chancellor's "outfit" was a picturesque survival of the days when, natives of Ireland being ineligible for the office, it was necessary to enable the exiled Englishman to transfer his goods and chattels to the Irish capital. For more than half a centuary no English lawyer held the Irish office, but the payment, its cause removed, continued as before. The salaries paid to officials of the Four Courts in Lord Ashbourne's day amounted to over 80,000*l.* a year. Money was absurdly plentiful in certain places in those days. The Irish Judges, also. were numerous and well paid in comparison with the volume and value of the work performed.—*L. J.*, 1932, p. 137.

Reputation Made in a Night.—Lord Carson and Lord Birkenhead had many points of resemblance; one of them being the fact that, though lawyers, they were both first-class House of Commons men; and the other that each established his fame and position with his maiden speech. Lord Carson, at the age of thirty-nine, made so great an impression that Joseph Chamberlain declared to his son Austen that a new power had arisen in politics; and wrote to Carson congratulating him on "the best debating speech I have heard for a long while in the House of Commons, and for a maiden speech unprecedented."

"He spoke not only with the fluency of a practised orator, but also with all the consummate ease of a Parliamentary hand. Behind him were Mr. Balfour, smoothing his handsome head of hair in the delight of listening; Mr. Goschen, in an angelic rapture; Sir Edward Clarke, looking as if the art of oratory was not dead; and other of the Tory leaders beaming and delighted . . Of the Ministers, Mr. Asquith alone seemed to enjoy the speech It evidently struck sympathetic chords. More than once he nodded his head approvingly. On all sides the opinion is ungrudgingly conceded that a rich acquisition has been made to the debating power of the House, and that the Unionists have added to their Front Bench, an orator of the first rank." Thus the Lobby correspondent of the *Sheffield Telegraph.*—*L. J.*, 1932, p. 137.

Methods of Legal Study.—Is there any royal road to the acquisition of legal knowledge, or, if there is none such, can any one method be described as better than another? In an interesting address on "Culture and Anarchy in Legal Education" delivered by Professor J. D. I Hughes, of the University of Leeds, at the annual meeting, recently held, of the Society of Public Teachers of Law, the abandonment of what was called "the present tradition in students' text-books" was advocated, these to be replaced by books introducing the beginner to the essential framework of law to the exclusion of the subtleties of case law. There is no doubt a good deal to be said for this suggestion in the case of those just entering upon their legal studies, but it is worth remembering that the students' books, as we know them, are a comparatively modern institution. In a note to his "First Book of Jurisprudence," Sir Frederick Pollock, who has done so much to improve the literature of the law, tells us that when he was beginning his studies, his grandfather, Chief Baron Pollock, wrote him as follows: "I myself read no treatises; I referred to them as collecting the authorities. I learned law by reading the reports and attending the courts, and thinking and talking of what I read and heard." Sir Frederick adds that it should be remembered that in the early part of the nineteenth century very few text-books aimed at either systematic arrangement or independent criticism; now, they do both, and the student of to-day is the gainer;

but, after all, he who would make a good lawyer in the sense of one who can advise his clients wisely and can represent them in court well armed legally cap-a-pie must learn his work in the way that Chief Baron Pollock did, namely, by reading the reports, attending the courts, and thinking and talking of what he reads and hears. Good text-books, and there are many such which are listened to with great respect in court, will help to make the path of the student a little easier, but they will not of themselves make him a thoroughly equipped member of the profession. Law, however, may be, and indeed often is, studied by others than those who intend to become practising members of one or other branch of the profession, and Professor Hughes had them also in mind in the address to which reference has been made. He made an eloquent plea for the bridging of the gulf between the traditional academic treatment of law and the requirements of the profession, pointing out that the adoption of the vocational ideal need not lessen the cultural value of a legal education. More than once during the last few years Lord Atkin has stressed the importance of law as a factor in a general liberal education. For this purpose Professor Hughes's plea for text-books introducing the beginner to the essential framework of law to the exclusion of the subtleties of case law, deserves, and, indeed, has already received, attention, as witness, for example, Professor Jenks's admirable "Book of English Law," and the equally valuable "English Law and its Background" by Mr. Fifoot. Such books as these show that English has emerged from the stage of being—to quote the phrase coined by ex-Justice Oliver Wendell Holmes—"a ragbag of details," and has become in the main a well-ordered system grounded upon a recognition of the duty of meeting the ever-varying needs of the community.—*S. J.*, 1932, p. 598.

The Use of Firearms.—When some young men were fined at Welwyn recently for wounding a boy in the ankle with a shot fired from a motor car, they pleaded that they had no intention of hurting anyone, but only wanted to frighten the lad. The incident brings to mind a notable piece of muddled admonition which once fell from a former magistrate of the Westminster Police Court, Mr. Sheil. A man was charged with shooting a gun at his brother. "Had there been any ill-will between you and your brother?" asked the magistrate, and, on being told that there was none, he exclaimed: "A person who points a gun at another without intending to shoot deserves to be well flogged."—*S. J.*, 1932, p. 607.